IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10069 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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VIRBHANU @ VIRA JIVABHAI BALASARA

Versus

STATE OF GUJARAT

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Appearance:

MS SUBHADRA G PATEL for Petitioner

MR DN PATEL, AGP for Respondent No. 1, 2, 3

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CORAM : MR.JUSTICE B.C.PATEL

Date of decision: 10/03/2000

ORAL JUDGEMENT

The detenu has preferred this petition as he is detained by an order passed by the Commissioner of Police, Rajkot under the provisions contained in the Gujarat Prevention of Anti Social Activities Act on 4.8.1999 for a period of one year.

2. The grounds of detention are produced at Annexure 'B' to the petition. Reading the grounds, it appears that the detenu is doing unlawful business; Despite the fact that there is prohibition in the State of Gujarat, without pass or permit, the detenu along with his associates: Sanjay, Dinesh and Anilkumar have imported huge quantity of prohibited foreign liquor by committing breach of the Bombay Prohibition Act. The detenu with others were found engaged in transporting, storing and selling illicit liquor. The nefarious activities of the detenu and his associates were causing harm to public health and it is a sufficient ground affecting adversely the public order, as held by the Apex Court in the case of K.S. ZALA vs. STATE OF GUJARAT reported in 1999 (2) GLH 415. The detenu was arrested for possessing illicit liquor and offences were registered under the provisions contained in the Bombay Prohibition Act, vide CR No. 77/99 at Rajkot 'A' Division Police Station. The detenu was again found with illicit liquor and another offence was registered at the same police Station on 3.8.1999, vide C.R. No. 79/99. On 2.8.1999, an information was received by the police and a raid was carried out near Katiawad Gymkhana known as "Eagle Palace" wherein associates of the detenu and the detenu were found in possession of illicit liquor, for which there was no explanation. The said persons disclosed the name of the detenu as the supplier of the liquor. The detenu admitted on 3.8.1999 that he is indulging in illegal activities, for which an offence has been registered, vide C.R. No. 77/99. Over and above this, it is also disclosed in the grounds of detention that the detenu is a headstrong person and if anyone refused to help the detenu, the detenu, by picking up a quarrel, used to threaten such innocent persons. On account of the terror created by the detenu, people were not coming forward to lodge complaint. Only after assurance being given that their names will not be disclosed, two persons disclosed information. From the statement of these two persons, it is clear that the detenu was indulging in bootlegging activities. He is creating an atmosphere of terror on account of his activities and thereby peace prevailing in the society was adversely affected. His activities were such that law and order situation was adversely affected. The detenu is a bootlegger as defined in the Act and the detaining authority being satisfied that the detenu is required to be detained, made an order at Annexure 'A', detaining the detenu for a period of one year.

3. Learned counsel appearing for the detenu raised several grounds, but the same are not required to be

examined in the instant case, as this petition is required to be allowed on the sole ground that the detaining authority itself has assumed the jurisdiction of making the order of detention for a period of one year, without the same being approved by the Advisory Board. Under the Act, the Commissioner of Police was required to forward a report in connection with the order of detention made by him to the State Government. It was for the State Government to place the case before the Advisory Board constituted under the Act. Only after the Advisory Board reports that in its opinion there are sufficient grounds for detaining the detenu, the State Government has to confirm the detention order and has to make an order of detention of the detenu for a period not exceeding the maximum period prescribed by section 14 of the Act, as it thinks fit. In the instant case, the detaining authority itself assumed the role of the State Government and made an order. Therefore, the order passed is bad and is required to be quashed and set aside.

In the result, the petition is allowed. The detention order is quashed and set aside. The detenu is ordered to be released forthwith if not required in any other case. Rule made absolute accordingly. No order as to costs.

csm./ ( B.C. PATEL, J.)